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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS-R7-MB-2012-0066]

[FF09M21200-123-FXMB1231099BPP0L2]

RIN 1018-AY70

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2013 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2013 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into

effect on April 2, 2013, and expire on August 31, 2013.

DATES: The amendments to subpart A of 50 CFR part 92 are effective [Insert date 30 days after date of publication in the Federal Register], and the amendments to subpart D of 50 CFR part 92 are effective April 2, 2013, through August 31, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Why Is This Rulemaking Necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2013. This rule establishes a list of migratory bird season openings and closures in Alaska by region.

How Do I Find the History of These Regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, was originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on March 26, 2012 (77 FR 17353). Recent **Federal Register** documents, which are all

final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

What Is the Process for Issuing Regulations for the Subsistence Harvest of Migratory Birds in Alaska?

The U.S. Fish and Wildlife Service is establishing migratory bird subsistence harvest regulations in Alaska for the 2013 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2013 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 17, 2012 (77 FR 23094), to amend 50 CFR part 20. While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2013 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 17, 2012, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 11-12 and May 9, 2012, to develop recommendations for changes to take effect during the 2013 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee (SRC) at the committee's meeting on July 25 and 26, 2012.

On September 21, 2012, we published in the **Federal Register** (77 FR 58732) a proposed rule that provided our proposed migratory bird subsistence harvest regulations in Alaska for the 2013 season. Regulations presented in that proposed rule were identical to those for the 2012 harvest season.

Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. Highly-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana,

Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

What Is Different in the Region-Specific Regulations for 2013?

Regulations established in this rule are identical to those for the 2012 harvest season. However, at the April 2012 Co-Management Council meeting, the North Slope Borough requested that the provision that enables yellow-billed loons inadvertently caught in subsistence fishing to be kept for subsistence use be added permanently to the consent agenda from 2013 regulations forward. The request eliminates the need for the North Slope Borough to resubmit the loon proposal annually and eliminates the requirement for the SRC to review and decide on the proposal at each subsequent July meeting. The motion passed with unanimous consent by the Co-Management Council.

In 2011, the North Slope Borough Wildlife Department conducted harvest surveys in Barrow,

Atqasuk, and Nuiqsut. They identified 125 fishermen and cabin owners from those 3 communities involved. Of the 125, only 3 refused to participate in the survey, so we had 97 percent participation. The resultant estimate was 25 yellow-billed loons entangled, of which 7 were released; 4 were used to make headdresses for traditional, ceremonial dances; and the remainder used for other subsistence purposes.

In the Co-Management Council's discussion of the North Slope Borough's proposal to eliminate the requirement for annual submission and review, the State of Alaska Representative stated that the North Slope Borough had done a very good job of putting together a loon harvest survey in those areas where yellow-billed loons and fishing co-exist, documenting the current levels of inadvertent take. At this meeting, the North Slope Borough committed to continue collecting this information for 2 more years (through 2013) to provide additional inadvertent take numbers to the SRC. On July 26, 2012, the SRC supported removal of the requirement for annual review and approval of the yellow-billed loon provision for the North Slope.

How Will the Service Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of candidate species or species listed under the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species; their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, provided the regulations continue to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with North Slope partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect taking of any threatened eider species.

This rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These

regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure will be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species, as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify that no closed eider species are taken during the legal subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot in the last 3 years, even though Steller's eiders nested in the Barrow area from 2010 through 2012. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Our primary strategy to reduce the threat of shooting mortality of threatened eiders is to continue working with North Slope partners to conduct education, outreach, and harvest monitoring. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. During 2009 through 2012, no Steller's eiders were reported being taken on the North Slope, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the 2012 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each receives. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and based on last year's observations local hunters have demonstrated greater compliance with hunting regulations.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from the past 3 years, clarifies that we would take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-billed loon and Kittlitz's murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris*) are candidate species for listing under the Endangered Species Act. Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2013, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule will continue through 2013 the provisions originally established in 2005, to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons will be allowed to be kept if found entangled in fishing nets in 2013, under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities.

Definition Clarification

We are adding a definition of harvest season "closure" to the existing definitions list at 50 CFR

92.4. This change to the regulations clarifies our use of this term. This addition was requested by members of the public who expressed some confusion as to whether or not egg gathering is also prohibited during harvest closures. Under our new definition, we clarify that a season “closure” means that the season is closed to all forms of harvest, including hunting and egg gathering, unless specified otherwise.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to “review other programs administered by him and utilize such programs in furtherance of the purposes of the Act” and to “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *” We conducted an intra-agency consultation with the Fairbanks Fish and Wildlife Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with a biological opinion dated January 24, 2013, that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller's eider, spectacled eider, yellow-billed loon, or Kittlitz's murrelet, or result in the destruction or adverse modification of designated critical habitat for Steller's eider or spectacled eider.

Summary of Public Involvement

On September 21, 2012, we published in the **Federal Register** a proposed rule (77 FR 58732) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the

2013 subsistence season. The proposed rule provided for a public comment period of 60 days, ending November 20, 2012. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council's Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide in Alaska. Additionally, all documents were available on <http://www.regulations.gov>. The Service received three responses, all from individuals.

Response to Public Comments

Comment: We received one general comment on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act; see 16 U.S.C. 712(1). See also **Statutory Authority** section, below, for more details.

Comment: We received one comment that it is unnecessary and time consuming to have the migratory bird harvest season subject to annual review and approval.

Service Response: At 50 CFR 92.30, we explain that the Co-Management Council will have the

opportunity to review the harvest regulations on an annual basis, working within the schedule of the late-season regulations for migratory game bird hunting. Under the Migratory Bird Treaty Act (16 U.S.C. 703-712), the harvesting of migratory birds is prohibited unless regulations are established ensuring the protection of the various populations of migratory birds. Development of these regulations involves annual data gathering to determine bird population status and trends, habitat conditions, harvest trends, and other factors that may have an impact on the effects of the harvest. The Service therefore proposes annual regulations for public comment for 50 CFR part 92, subpart D.

Comment: One commenter stated that the Service violated the language of the Migratory Bird Treaty Act by permitting the taking of birds for cultural purposes, namely the taking of yellow-billed loons for use in traditional dance regalia.

Service Response: The commenter correctly points out that “the Secretary of the Interior is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs...” (16 U.S.C. 712(1)). While the commenter does not believe that traditional dance regalia is an essential need, the regulations issued by the Secretary of the Interior at 50 CFR 92.6 state that nonedible byproducts of migratory birds may be used for other purposes. Traditional dance regalia is such a purpose.

Comment: One commenter stated that the Service did not provide adequate notice as required by the Administrative Procedure Act (5 U.S.C. 551 et seq.) for its proposal to permanently add to

the consent agenda the provision enabling yellow-billed loons inadvertently caught on subsistence fishing to be kept for subsistence use. The commenter further contends that the Service did not make the North Slope Borough loon survey report part of the administrative record available with the proposed rule, denying the public access to review and comment if it was sufficient. In addition, they requested that Service should reopen the comment period for the proposed rule to make available the loon survey report and allow the public an opportunity to comment on it.

Service Response: The proposed rule included the provision allowing yellow-billed loons that are inadvertently entangled in fishing nets to be kept for subsistence uses. Thus, the Service provided the legally-required notice that it intended to include this provision in the final rule. The consent agenda and the North Slope Borough loon survey report pertain to the development of the Service's regulatory proposal. The loon survey report was available and was discussed at the April 11-12, 2012, meeting of the Co-Management Council in Anchorage, which was a publicized public meeting. In addition, any referenced documents were and are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. During the 60-day public comment period for the proposed rule, interested members of the public had further opportunities to request and receive the loon survey report and to submit comments on it.

Comment: The Service relied on limited, uncertain data when addressing the proposal to permanently add to the consent agenda the provision enabling yellow-billed loons inadvertently caught in subsistence fishing to be kept for subsistence use, such that the Service violated the Administrative Procedure Act by not supplying sound facts to support the decision.

Service Response: The North Slope Borough's survey methodology was reviewed and approved

in advance by both the Service and the Alaska Department of Fish and Game. By targeting registered subsistence fishermen from villages where their fishing activities overlap with the breeding range of yellow-billed loons, the survey focused on the users that could inadvertently catch yellow-billed loons in their fishing nets. The survey was voluntary, and cannot be legally mandated, so a 97 percent response rate was exceptional. Consequently, the Service considers the survey to be a comprehensive and valid means of documenting the current levels of inadvertent take.

Comment: The Service's proposal to allow 20 yellow-billed loons to be kept for subsistence purposes when inadvertently caught in subsistence fishing nets is an arbitrary and capricious number with no record evidence to support it.

Service Response: In the face of uncertainty, the SRC, on July 29, 2004, proposed 20 as the maximum number of yellow-billed loons that could be inadvertently caught and retained annually in the North Slope Region. The number 20 was chosen as a trigger point that if the inadvertent harvest remained below that, it was deemed not a significant threat to the local breeding population; however if the harvest exceeded that, then any continuation of this provision would have to be carefully re-evaluated by the SRC. During the following 7 years, the SRC required annual re-evaluation of this provision to monitor the amount of yellow-billed loons actually being caught and retained, and to allow the Service to work with the North Slope Borough on outreach efforts to encourage safe release of loons inadvertently caught in the fishing nets, when possible. Since that time, there has been no indication that the numerical cap should change. Thus, the SRC did not see the need to adjust the numerical cap on the number of loons salvaged.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more. It legalizes and regulates a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that will be regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this final rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this final rule will lead to a disproportionate distribution of benefits.
- (b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This final rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This final rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this final rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make

annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this final rule does not have significant takings implications. This final rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this final rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this final rule, has determined that it does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations with Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), “Consultation and

Coordination with Indian Tribal Governments”, and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we emailed or sent letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we emailed or sent letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2013 migratory bird subsistence harvest regulations. We received 4 responses, of which 2 requested consultation. One respondent was confused as to the process and was actually just seeking more information, and one respondent did not want to consult after also receiving clarification of the process. We conducted 2 consultations, one with a tribe and one with a corporation, on November 14, 2012. All contacts were happy with the information provided and did not have any comments on the regulations. One contact did suggest a change in the public distribution of the regulations, requesting that tribal offices receive extra copies of the public booklet.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska’s indigenous inhabitants in the conservation of migratory birds. According to the letter of submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible

in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act

This final rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget (OMB) approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires April 30, 2013. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.) Consideration

The annual regulations and options are considered in the environmental assessment, “Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2013 Spring/Summer Harvest,” September 12, 2012. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov> under docket number FWS-R7-ES-2012-0066.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. This is not a significant regulatory action under this Executive Order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. Further, this final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

For the reasons set out in the preamble, we are amending title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

2. Amend § 92.4 by adding, in alphabetical order, a definition for “*Closure*” to read as follows:

§ 92.4 Definitions.

* * * * *

Closure means the season is closed to all forms of harvest, including hunting and egg gathering, unless specified otherwise.

* * * * *

Subpart D—Annual Regulations Governing Subsistence Harvest

3. Add § 92.31 to subpart D to read as follows:

§ 92.31 Region-specific regulations.

The 2013 season dates for the eligible subsistence harvest areas are as follows:

(a) Aleutian/Pribilof Islands Region.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region’s eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service’s Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President’s Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service’s Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President’s Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) Northwest Arctic Region.

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30'W and south of the latitude line 70°45'N to the west

bank of the Ikpikpuk River, and everything south of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30'W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30'W and north of the latitude line 70°45'N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland);

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) Upper Copper River Region (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) Gulf of Alaska Region.

(1) Prince William Sound Area (Harvest area: Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of

Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier:

(2) Closure: June 1–July 31.

(l) Southeast Alaska.

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR Part 100.3(a)):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay):

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

4. Add § 92.32 to subpart D to read as follows:

§ 92.32 Emergency regulations to protect Steller’s eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller’s eiders (*Polysticta stelleri*), the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller’s eiders to be taken no longer exists.

Dated: February 12, 2013

Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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